



CMA.No.3408 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

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1. Uma
 2. Minor Elakkiya
Rep. by her Mother Uma,
1st and 2nd Appellants are residing at
No.5/449, Sri Nagar, Bharathiyar Veethi,
Pichampalayam Pudhur, Tiruppur District.
 3. Sumathi
 4. Ramalingam
- ...Appellants

Vs.

1. The Chairman,
Vinayaka Missions Arts and Science College,
Sankari Main Road, Ariyanur, Salem District.
2. Bajaj Allianz General Insurance Company Limited,
No.497/498, 5th Floor, Isana Kattima Building,
Poonamallee High Road, Arumbakkam, Chennai District.

Having Branch Office at No.68,
SLS Towers, 1st Floor, Cherry Road,
Hasthampatty, Salem District.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, seeking to enhance the compensation made in judgment and decree dated 01.02.2024 made in MCOP.No.199 of 2023



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on the file of the Special District Judge, MCOP Tribunal, Salem.

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For Appellants : Mr.C.Kulanthaivel

For Respondents : Mrs.C.Harini for
: M/s.M.B.Gopalan Associates for R2

JUDGMENT

Challenging the judgment and decree dated 01.02.2024 made in MCOP.No.199 of 2023 on the file of the Special District Judge, MCOP Tribunal, Salem, the claimants have come up with this appeal.

2. Mrs.C.Harini, learned counsel takes notice on behalf of the 2nd respondent. Though the notice was served on the first respondent, there was no representation on behalf of the first respondent. In view of the consent expressed by the learned counsel for the appellant and the second respondent, this appeal is taken up for final disposal at the admission stage itself.

3. It is the case of the claimants that, on 09.01.2023 at about 08.30 am., when the deceased Gowrisankar was riding a two-wheeler bearing registration No.TN 90 D 5777 on the extreme left side of the road, at that time, the first respondent's bus bearing registration No.TN 30 AQ 4452



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insured with the second respondent driven by its driver in a rash and negligent manner came in the very same direction, all of a sudden overtook the two wheeler driven by the deceased and turned the bus towards the left side of the road by dashing the vehicle driven by the deceased due to which the said Gowrisankar sustained grievous injuries and succumbed to death. Thereby, the appellants, who are the dependents of the deceased Gowrisankar filed a claim petition in MCOP.No.199 of 2023 claiming a compensation of Rs.50,00,000/-.

4. Before the Tribunal, the 1st appellant/1st claimant examined herself as P.W.1 and marked Exhibits P.1 to P.13 and on the side of the respondents, no witnesses were examined and marked Exhibits R.1 and R.2. After trial, the Tribunal, on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place solely due to the rash and negligent driving on the part of the driver of the 1st respondent and awarded Rs.16,75,000/- towards compensation for the death of the deceased Gowrisankar and held that the 1st and 2nd respondents are jointly and severally liable to pay the above compensation. Being not satisfied with the quantum of compensation



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awarded by the Tribunal, the appellants/claimants have come up with this appeal seeking enhancement of compensation.

5. Learned counsel for the appellants submitted that the above said accident happened solely due to the rash and negligent driving on the part of the driver of the 1st respondent and the accident is of the year 2023 and at the time of accident, the deceased was aged about 29 years and was working as an Driver cum Supervisor and was earning not less than a sum of Rs.30,000/- per month, however, the tribunal had taken the notional income of the deceased as Rs.10,000/- inclusive of future prospects, which is very meagre and the same is contrary to the ratio laid down by the Hon'ble Apex court in catena of decisions and thereby, the same has to be interfered with. Further, the compensation awarded under other heads are also on the lower side and the same needs to be enhanced. Accordingly, he prayed for appropriate orders.

6. Per contra, the learned counsel appearing on behalf of the 2nd respondent-Insurance Company contended that, by considering all the relevant documents, the Tribunal has rightly awarded the compensation,



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which does not require any enhancement. Accordingly, he prays for dismissal of the appeal.

7. This Court has carefully considered the submissions made by the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials available on record.

8. The factum and manner of the accident is not disputed by the parties and the parties have not raised any issue on the aspect of negligence and therefore, this Court is not venturing into the same.

9. Insofar as the quantum of compensation fixed by the tribunal is concerned, the accident is of the year 2023 and at the time of accident, the deceased was aged about 29 years and he was a Driver cum Supervisor by profession, however, the Tribunal has fixed the notional monthly income at Rs.10,000/- inclusive of future prospects, which is on the lower side. Applying the ratio laid down by the Hon'ble Supreme Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in **2014 (1) TANMAC 459**, and also considering the age of the



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deceased as also the claimants, fixing a notional income of Rs.18,000/- and adding future prospects at 40%, as has been held by the Constitution Bench in the case of *National Insurance Company Limited Vs. Pranay sethi and others* reported in **2017 (16) Supreme Court Cases 680**, the income per month is quantified at Rs.25,200/-. Deducting 1/4th towards the personal expenses of the deceased, the loss of income to the family is arrived at Rs.18,900/- per month and the deceased being aged about 29 years, as evidenced from the records, adopting the multiplier of 17 as fixed by the Apex Court in the case of *Sarla Verma and Ors. v. DTC & Ors.* reported in **(2009) 6 SCC 121**, the loss of income to the family is arrived at Rs.18,900/- * 12 * 17 = Rs.38,55,600/-.

10. Insofar as the compensation awarded under the other heads are concerned, the tribunal had awarded a compensation of Rs.80,000/- under the head love and affection, which is very meage and the same has to be modified as Rs./- (44,000/- * 3= 1,76,000/-), however, the compensation of Rs.40,000/- awarded under the head Loss of consortium is meagre and the same is enhanced to a sum of Rs.44,000/- to the wife of



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the deceased. No compensation has been awarded under the head loss of estate, and thereby, this Court awards a sum of Rs.16,500/-. At the same time, the tribunal has awarded a compensation of Rs.25,000/- under the head funeral expenses which is on the higher side and the same is reduced to Rs.16,500/-.

11. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Modified Award Amount (Rs.)</i>
Loss of income	15,30,000/-	38,55,600/- (enhanced)
Loss of love and affection	80,000/-	1,32,000/- (enhanced)
Loss of consortium	40,000/-	44,000/- (enhanced)
Loss of estate	-	16,500/- (awarded)
Funeral Expenses	25,000/-	16,500/- (reduced)
Total	16,75,000/-	40,64,600/-

12. Accordingly, this Civil Miscellaneous Appeal stands allowed in



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part and the impugned award passed by the Tribunal in MCOP.No.199 of 2023 is modified by enhancing the compensation amount from Rs.16,75,000/- to **Rs.40,64,600/-**. The 2nd respondent Insurance is directed to deposit the said amount to the credit of MCOP.No. 199 of 2023 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellants/claimants through RTGS within a period of two weeks thereafter, upon production of proof with regard to payment of Court fee on the enhanced compensation. It is underscored that the appellants are not entitled to any interest for the default period, if any. The aforesaid award amount shall be apportioned amongst the appellants/claimants as per the Award of the Tribunal. No costs.

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rap
NCC : Yes/No
Index : Yes/No
Speaking Order : Yes/No



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1. The Special District Judge, MCOP Tribunal, Salem.
2. The Section Officer,
V.R. Section, High Court, Madras.



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M.DHANDAPANI, J.

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